

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR: 7127

COMPLAINT FILED: Aug. 22, 2016

DATE OF NOTIFICATION: Aug. 26, 2016

LAST RESPONSE: Oct. 3, 2016

DATE ACTIVATED: June 22, 2017

ELECTION CYCLE: 2016

EARLIEST SOL: Apr. 14, 2021

LATEST SOL: Feb. 5, 2022

COMPLAINANT:

Allie Marie Sumner

RESPONDENTS:

Sean Braddy for US Senate and Kim Braddy
in her official capacity as treasurer
Sean Braddy
Kim Braddy

**RELEVANT STATUTES
AND REGULATIONS**

52 U.S.C. § 30102(b)(3)
52 U.S.C. § 30102(h)(1)
52 U.S.C. § 30104(a) and (b)
52 U.S.C. § 30114(b)(1) and (2)
52 U.S.C. § 30123
11 C.F.R. § 102.15
11 C.F.R. § 103.2
11 C.F.R. § 103.3(a)
11 C.F.R. § 110.4(c)(2)
11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint allege that senatorial candidate Sean Braddy and his wife Kim Braddy,
who also serves as his campaign treasurer, violated the Federal Election Campaign Act of 1971,
as amended (the "Act") and Commission regulations by using campaign funds for personal use

1 and by failing to properly report campaign receipts. The Respondents deny using campaign
2 funds for personal use and assert that all contributions were properly reported.

3 Given the totality of the circumstances presented in this case, including the low dollar
4 amounts involved, we recommend that the Commission dismiss this matter in an exercise of
5 prosecutorial discretion, issue a caution letter, and close the file.¹

6 II. FACTUAL BACKGROUND

7 Sean Braddy was a candidate for the U.S. Senate in Oklahoma in 2016 and Sean Braddy
8 for US Senate (the "Committee") served as his principal campaign committee.² Kim Braddy is
9 the Committee's treasurer.³ The Committee's disclosure reports indicate that the campaign
10 raised a total of \$12,549.53.⁴ The single largest contribution to the Committee was an in-kind
11 contribution of \$2,685 for website design and development, and most of the remaining
12 contributions were in amounts less than \$200.⁵

13 The Committee's Statement of Organization lists the Friends Federal Credit Union
14 ("FFCU") in Norman, Oklahoma, as the Committee's depository.⁶ That depository, however,

¹ *Heckler v. Chaney*, 470 U.S. 821 (1985).

² See Sean Braddy, Statement of Candidacy (July 6, 2016); Sean Braddy for US Senate, Statement of Organization (July 16, 2016). On November 8, 2016, Braddy lost the Oklahoma Senate general election with 2.79% of the vote. See Oklahoma State Election Board, 2016 Election Results, https://www.ok.gov/elections/support/20161108_seb.html.

³ See Sean Braddy for US Senate, Statement of Organization (July 16, 2016).

⁴ See Sean Braddy for US Senate, 2016 Post-General Report.

⁵ The in-kind contribution was received on June 19, 2016. Sean Braddy for US Senate, 2016 July Quarterly Report. The Committee reported receiving: \$5,421.86 in itemized contributions, which included the in-kind contribution, and \$3,238.82 in unitemized contributions in its 2016 July Quarterly Report; \$1,208.35 in itemized contributions and \$2,346 in unitemized contributions in its 2016 Quarterly Report; \$45 in unitemized contributions in its 2016 Pre-General Report; and \$50 in unitemized contributions in its 2016 Post-General Report. See also Joint Resp. Attach. A, C, D.

⁶ See Sean Braddy for US Senate, Statement of Organization (July 16, 2016).

1 appears to have been used only once during the campaign – to pay Sean Braddy's \$1,000 state
2 filing fee.⁷ The available information indicates that the Respondents used three other accounts to
3 manage the campaign's finances: Kim Braddy's personal PayPal account, a Sean Braddy for US
4 Senate PayPal account, and Sean Braddy's individual bank account.⁸

5 The Complaint, filed by the Committee's former Tulsa area Event/Volunteer coordinator,
6 alleges that the Braddys used campaign funds for personal use.⁹ The Complainant asserts that
7 she "witnessed" the purchase of alcohol with campaign funds, but does not specifically link that
8 activity to either Sean or Kim Braddy.¹⁰ The Complaint also alleges that the Respondents failed
9 to properly report campaign funds, which were "funneled" into Kim Braddy's personal PayPal
10 account, from which both she and the candidate made "multiple withdrawals."¹¹ The
11 Complainant also alleges that she was pressured to request cash donations at campaign events,
12 which the Braddys did not report.¹²

⁷ The candidate apparently paid the filing fee on April 15, 2016. Joint Resp. at Attach. A. (Handwritten list of contributions received and expenses paid between April 15, 2016 and August 2016.) *See Ballot Access Requirements for Political Candidates in Oklahoma*, Ballotpedia, https://ballotpedia.org/Ballot_access_requirements_for_political_candidates_in_Oklahoma.

⁸ *See* Joint Response at Attach. C (Kim Braddy's April 2016, PayPal Account Statement showing activity between April 14, 2016, and April 20, 2016); Attach D. (Sean Braddy for US Senate PayPal Financial Statement (January 1, 2016, to September 6, 2016) showing activity between April 29, 2016, and August 3, 2016). The Respondents did not provide any documents related to the Committee's use of Sean Braddy's personal bank account, which, according to Respondents, was used to move money from Kim Braddy's PayPal account to the Committee's depository account. *Id.* at 1.

⁹ Compl. at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

1 The Respondents deny that the Braddys used campaign funds for personal use.¹³ This
2 denial is, to some extent, contradicted by the Committee's disclosure reports. In a Memo Text
3 attached to the Committee's 2016 Year-End Report, Kim Braddy states that "we intend to use the
4 remaining \$111.56 from the political campaign towards vehicle maintenance."¹⁴ Although the
5 record does not indicate the purpose for which those funds were disbursed, the memo text and
6 the relevant Committee reports indicate that the Respondents used this money to maintain a car.
7 As to the allegation relating to alcohol purchases, Sean Braddy states he used his own funds to
8 pay for dinner and drinks for himself and a campaign worker at a Tulsa Volunteer meeting held
9 on June 29, 2016.¹⁵

10 The Respondents acknowledge that the Committee's first disclosure report was filed late,
11 but assert that all contributions were properly reported.¹⁶ The Respondents also admit that the
12 Committee did not use the depository listed in its Statement of Organization to manage the
13 Committee's finances.¹⁷ According to the Response, the Committee deposited campaign
14 receipts into Kim Braddy's PayPal account before they were transferred to the candidate's
15 personal bank account, and then transferred again to the Sean Braddy for US Senate PayPal

¹³ Joint Resp. at 1.

¹⁴ See Memo Text, Sean Braddy for US Senate, Termination Report. This report states on the Detailed Summary Page, that the Committee had \$111.56 cash on hand at the end of the reporting period. *Id.* at 4. This disclosure report, dated February 10, 2017, should be designated as the 2016 Year-End Report instead of a Termination Report. Due to the ongoing MUR, the Committee is not eligible for termination.

¹⁵ *Id.* at 2.

¹⁶ Joint Resp. at 1. The Committee filed its 2016 July Quarterly Report over a month late, on August 17, 2016. According to the Response, the 2016 July Quarterly Report was late filed due to a number of factors, including a delay in retrieving receipts and other campaign documents from the individual originally retained to serve as treasurer. *Id.*

¹⁷ *Id.*

1 account.¹⁸ The Respondents also admit that the Committee received cash donations, "each less
2 than \$200," but deny that the Complainant was asked to accept only cash donations.¹⁹

3 II. LEGAL ANALYSIS

4 A. Personal Use

5 The Act prohibits the conversion of campaign funds to personal use.²⁰ The
6 Commission's regulations define "personal use" as "use of funds in a campaign account of a
7 present or former candidate to fulfill a commitment, obligation or expense of any person that
8 would exist irrespective of the candidate's campaign or duties as a Federal officeholder."²¹ *Per*
9 *se* personal use expenses include: a home mortgage, rent, or utility payment; clothing purchase;
10 or a *noncampaign-related automobile expense*.²² (emphasis added.)

11 While the Complainant did not provide any information to support her allegation that
12 Sean and Kim Braddy used campaign funds to pay personal expenses, the information suggests
13 that, at some point after the November 2016 election, the Braddys used campaign funds to pay
14 for personal vehicle maintenance.²³

¹⁸ *Id.* See Attach. A, C and D.

¹⁹ *Id.* at 2. According to the Joint Response, the Committee raised funds through the campaign's Facebook page and website. *Id.*

²⁰ 52 U.S.C. § 30114(b)(1).

²¹ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

²² 52 U.S.C. § 30114(b)(2)(A)-(C).

²³ The Committee's disclosure reports suggest that the Braddys used the campaign funds for vehicle maintenance at some point between February 5, 2017, and April 30, 2017. See Sean Braddy for US Senate, Termination Report, at 1; Sean Braddy for US Senate, 2017 April Quarterly Report, at 4. The Braddy Committee's 2017 July Quarterly report states that the committee had \$0 cash on hand at the beginning and the end of the reporting period. See Sean Braddy for US Senate, July Quarterly Report, at 4.

1 Therefore, while it appears that Sean and Kim Brady may have converting campaign
2 funds to personal use, given the *de minimis* amount at issue, we recommend the Commission
3 exercise its prosecutorial discretion and dismiss the allegation that Sean and Kim Braddy
4 violated 52 U.S.C. § 30114(b)(1) and issue a letter of caution.²⁴

5 **B. Failure to use Proper Campaign Depository and Commingling**

6 The Act and Commission regulations require political committees to designate one or
7 more State banks, federally chartered depository institutions, or depository institutions or
8 accounts which are insured by the Federal Deposit Insurance Corporation ("FDIC") . . . or the
9 National Credit Union Administration, as its campaign depository or depositories.²⁵ All
10 campaign receipts must be deposited, and disbursements (except petty cash) must be drawn on
11 such accounts.²⁶ The Act and Commission regulations also require that all campaign funds must
12 be "segregated from and may not be commingled with the personal funds of any individual."²⁷

13 The Committee listed FFCU on its Statement of Organization as its campaign depository,
14 but apparently only used that account to pay the state's filing fee.²⁸ The Respondents effectively
15 admit that the Committee used improper campaign depositories by depositing the majority of
16 campaign funds raised (\$12,549.53), and making campaign expenditures from two PayPal

²⁴ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). See MUR 7057 (Jason Chaffetz, *et al.*) (Commission dismissed allegation that the respondent used the committee vehicle for personal use because of the vagueness of evidence, the impending statute of limitations, and the possibility that personal use of the vehicle was *de minimis*, and issued letter of caution.)

²⁵ 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.2 and 3(a).

²⁶ 52 U.S.C. § 30102(h)(1).

²⁷ 52 U.S.C. § 30102(b)(3); 11 C.F.R. § 102.15.

²⁸ See Joint Resp., Attach. A at 9.

1 accounts and the candidate's personal bank account, none of which are proper depositories.²⁹

2 The Respondents also admit that campaign funds were improperly commingled with the

3 Braddys' personal funds by stating that campaign contributions were deposited into Kim

4 Braddy's personal PayPal account and also into a personal account held by the candidate.³⁰

5 In light of the Committee's modest amount of activity during the general election cycle,

6 however, we do not believe that it would be a prudent use of OGC resources to pursue this issue

7 any further and recommend that the Commission dismiss the allegation and send a letter of

8 caution to the Committee.³¹

²⁹ PayPal is an on-line commerce company, which provides payment services to its customers. The service does not physically handle or hold funds placed into a PayPal account, instead such funds are typically transferred into PayPal's money market fund. Balances held in a PayPal account are not federally insured – they are unsecured claims against PayPal. The FDIC does not consider PayPal a bank or savings association because it does not accept deposits as defined by federal law, which requires institutions to have a banking charter. See Troy Wolverton, *The FDIC Says It Doesn't Consider the Online Payment Service a Bank – Boosting PayPal's Bid Not to be Regulated as One*, ZDNET (Mar. 13, 2002), <http://www.zdnet.com/article/fdic-decides-paypals-no-bank/>.

³⁰ Resp. at 1. Because the Respondents did not provide any documents related to the Committee's use of Sean Braddy's personal bank account, we are unable to state the total amount of campaign funds that were commingled with the candidate's personal funds.

³¹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). The Commission has typically found reason to believe and conciliated improper depository cases where the matter involved additional violations and/or the amount in violation was materially larger than it is in this case. See MUR 7126 (Michigan Democratic State Central Committee) (conciliation agreement with the respondent committee, which failed to properly deposit, record, disburse, and report over \$4.4 million in gaming proceeds); MUR 6978 (Oakland County Democratic Party) (conciliation agreement with the respondent committee, which failed to properly deposit, record, and report over a million dollars in gaming receipts and failed to disclose over \$700,000 in disbursements); MUR 5359 (Paul Williams for Congress) (conciliation agreement with the respondent committee, which failed to properly deposit \$24,034, used campaign funds for personal use, misstated financial activity, failed to itemize and report disbursements, and failed to report campaign debts and obligations). The Commission also usually pursues commingling violations when the case involves the embezzlement of committee funds, activity not present in this matter. See MUR 6980 (Samuel K. Pate, Jr.) (conciliation agreement with the respondent vendor who embezzled over \$500,000 in campaign funds); MUR 6867 (Robert M. Telthorst) (conciliation agreement with the respondent treasurer who embezzled \$21,300 in campaign funds); MUR 5920 (Monica J. Cash) (conciliation agreement with the respondent office manager who embezzled over \$83,000 in committee funds). But see MUR 1615 (Committee on Letter Carriers Political Education) (conciliation agreement with organization whose members deposited contributions raised into personal accounts and later made personal checks payable to the committee; \$500 civil penalty).

C. Acceptance of Cash Contributions

The Act and Commission regulations also prohibit making cash contributions that aggregate in excess of \$100 and require that political committee receiving cash contributions exceeding this limit promptly return the excessive amount to the contributor.³² A review of the available information indicates that the Committee accepted and failed to timely refund the excessive amount of cash contributed by three individuals; the Committee accepted two cash contributions of \$1,000 each and one cash contribution of \$200.50³³ Given the *de minimis* amount in violation, we recommend that the Commission exercise its prosecutorial discretion, dismiss this allegation, and issue a letter of caution.³⁴

D. Reporting

Political committee must file disclosure reports with the Commission in accordance with 52 U.S.C. § 30104(a).³⁵ The Act also requires that political committees accurately report their receipts and disbursements.³⁶ As acknowledged by the Respondents, the Committee filed its 2016 July Quarterly report 32 days late.³⁷ In addition, the Committee failed to properly report a

³² 52 U.S.C. §§ 30104(b) and 30123; 11 C.F.R. § 110.4(c)(2). Treasurers of political committees are required to examine contributions for evidence of illegality. 11 C.F.R. § 103.3(b).

³³ See Sean Braddy for US Senate, 2016 July Quarterly Report at Schedule A, 1 (Michael Krauss contributed: \$1,000 in cash on April 15, 2016, \$50 in cash on May 5, 2016, \$50 in cash on June 5, 2016, and made an in-kind contribution of \$421.36 on June 13, 2016; Alfred Duffy contributed \$1,000 in cash on April 15, 2016; Mary Francis contributed \$200.50 in cash on June 18, 2016). *Id.* at 1, Schedule A Memo Item.

³⁴ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

³⁵ Political committee are required to file quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year. 52 U.S.C. § 30104(a)(2)(A)(iii).

³⁶ *Id.* § 30104(a) and (b).

³⁷ See Joint Resp. at 1; Sean Braddy for US Senate, 2016 July Quarterly Report.

1 \$732.50 in-kind contribution (proceeds from a garage sale) made on August 2, 2016, on its 2016
2 October Quarterly Report.³⁸ Given of the Committee's modest amount of activity during the
3 general election cycle and the *de minimis* amount of the in-kind contribution at issue, we
4 recommend that the Commission dismiss the reporting allegation.³⁹ However, in light of the
5 multiple reporting violations, we recommend that the Commission issue a letter of caution.

6 **IV. RECOMMENDATIONS**

- 7 1. Dismiss the allegation that Sean Braddy and Kim Braddy violated 52 U.S.C.
8 § 30114(b)(1) and send a letter of caution;
9
10 2. Dismiss the allegation that Sean Braddy and Kim Braddy, and Sean Braddy for US
11 Senate and Kim Braddy in her official capacity as treasurer violated 52 U.S.C.
12 § 30102(b)(3) and send a letter of caution;
13
14 3. Dismiss the allegations that Sean Braddy for US Senate and Kim Braddy in her official
15 capacity as treasurer violated 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 103.3 and send a
16 letter of caution;
17
18 4. Dismiss the allegation that Sean Braddy for US Senate and Kim Braddy in her official
19 capacity as treasurer violated 52 U.S.C. § 30123 and 11 C.F.R. § 110.4(c)(2) and send a
20 letter of caution;
21
22 5. Dismiss the allegation that Sean Braddy for US Senate and Kim Braddy in her official
23 capacity as treasurer violated 52 U.S.C. § 30104(a) and (b) and send a letter of caution;
24
25 6. Approve the attached Factual and Legal Analysis;
26
27 7. Approve the appropriate letters; and

³⁸ In-kind contribution must be reported as both a contribution received and an expenditure made. 11 C.F.R. § 104.13(a)(2). *See* Joint Resp., Attach. A at 4; Sean Braddy for US Senate, 2016 October Quarterly Report.

³⁹ *Heckler v. Chaney*, 470 U.S. 821 (1985).

8. Close the file.

Lisa J. Stevenson
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8.21.17
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